

# Crime Victim Compensation Awards From the Crime Victim Services Commission

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## In this chapter. . .

This chapter discusses awards of crime victim compensation by the Crime Victim Services Commission (“CVSC” or “commission”). The crime victims compensation act, MCL 18.351 et seq.; MSA 3.372(1) et seq., provides for reimbursement of eligible out-of-pocket expenses to eligible crime victims. The act is narrow in scope and provides awards of compensation to eligible crime victims only when other sources of reimbursement have been exhausted or are unavailable. *Jerome v Crime Victims Comp Bd*, 419 Mich 161, 164 (1984). Compensation under the crime victims compensation act differs from restitution in that it is awarded by an administrative agency rather than a court and is available whether or not the offender is apprehended or prosecuted.

The topics discussed in this chapter include:

- F individuals who are eligible for compensation;
- F losses that may be reimbursed;
- F requirements for filing claims;
- F requirements for investigating claims;
- F requirements for deciding claims;
- F limitations on the amount of awards;
- F procedural requirements for appealing the commission’s decision to the Court of Appeals; and
- F limits on attorney fees.

Section 11.23 contains a sample application form.

Issues related to crime victim compensation from the CVSC are also discussed in other portions of this manual. See Section 2.7 (description of the Crime Victim Services Commission), Section 5.15 (confidentiality provisions governing proceedings before the Crime Victim Services Commission), Sections 7.2 and 7.6 (notification by the investigating law enforcement agency and prosecuting attorney of the availability of crime victim compensation), and Section 10.24 (coordinating payment of restitution and crime victim compensation awards).

## 11.1 Individuals Eligible for Awards of Compensation

Under MCL 18.354(1)(a)–(c); MSA 3.372(4)(1)(a)–(c), the following individuals are eligible to receive awards of compensation:

- “(a) A victim or an intervenor of a crime.

“(b) A surviving spouse, parent, grandparent, child, sibling, or grandchild of a victim of a crime who died as a direct result of the crime.

“(c) Any other person dependent for his or her principal support upon a victim of a crime who died as a direct result of the crime.”\*

To be eligible for an award, the claimant must suffer a minimum out-of-pocket loss of \$200.00, or at least two continuous weeks of lost earnings or support. MCL 18.354(3); MSA 3.372(4)(3). However, the commission may waive these limitations if the claimant is “retired by reason of age or disability” or “a victim of criminal sexual conduct in the first, second, or third degree.” *Id.*

The following subsections define key terms contained in MCL 18.354(1); MSA 3.372(4)(1).

## A. “Crime”

A “crime” is an act that violates a state or federal criminal law. MCL 18.351(1)(c)(i)–(iii); MSA 3.372(1)(1)(c)(i)–(iii), state that a “crime” is an act that is one of the following:

“(i) A crime under the laws of this state or the United States that causes an injury within this state.

“(ii) An act committed in another state that if committed in this state would constitute a crime under the laws of this state or the United States, that causes an injury within this state or that causes an injury to a resident of this state within a state that does not have a victim compensation program eligible for funding from the victims of crime act of 1984 . . . .

“(iii) An act of international terrorism as defined in . . . 18 U.S.C. 2331, committed outside the territorial jurisdiction of the United States that causes an injury to a resident of this state.”

“Crime” does not include civil infractions. 1979 AC, R 18.351(1)(e). Claims resulting from the operation of a motor vehicle may only be awarded when the alleged injuries are the result of a criminal offense and not a civil infraction under state law. When appropriate, the commission will refer claimants to the “assigned claims plan”\* within the Michigan Department of State. 1979 AC, R 18.357.

\*Under legislation pending at the time this manual was published, health care providers would be eligible for reimbursement of certain costs in sexual assault cases. See SB 552 and 553.

\*See MCL 500.3171 et seq.; MSA 24.13171 et seq.

**B. “Dependent”**

A “dependent” is “a person who receives at least 1/2 of his or her support from a deceased victim or claimant and includes a child of the victim born after his or her death.” 1979 AC, R 18.351(1)(g).

**C. “Intervenor”**

An “intervenor” is “a person who goes to the aid of one who has become a victim of a crime and who suffers personal physical injury.” MCL 18.351(1)(d); MSA 3.372(1)(1)(d).

**D. “Personal Physical Injury”**

A victim or intervenor must suffer “personal physical injury” to be eligible for compensation. MCL 18.351(1)(d) and (i); MSA 3.372(1)(1)(d) and (i). “‘Personal physical injury’ means actual bodily harm and includes pregnancy.” MCL 18.351(1)(f); MSA 3.372(1)(1)(f). The commission will not reimburse a claimant for losses related to theft or loss of, or damage to, personal property, or for pain, suffering, inconvenience, physical impairment, or other nonpecuniary damage. 1979 AC, R 18.356(1)–(2).

**E. “Support”**

“Support” is defined in MCL 18.351(1)(h); MSA 3.372(1)(1)(h), as “actual monetary payments made by a victim or intervenor to or for a person principally dependent on the victim or intervenor.” See also 1979 AC, R 18.351(1)(k) (“‘[l]oss of support’ means the cessation of a victim’s earnings that were actually paid to or for a dependent prior to the victim’s death . . .”).

**F. “Victim”**

A “victim” is “a person who suffers a personal physical injury as a direct result of a crime.” MCL 18.351(1)(i); MSA 3.372(1)(1)(i).

**11.2 Time Requirements for Reporting the Crime**

To be eligible for an award, a claimant must report the crime to the proper authorities within 48 hours after its occurrence. MCL 18.360(c); MSA 3.372(10)(c). However, a claimant may still be eligible for an award if the commission finds that either of the following applies:

“(i) The crime was criminal sexual conduct committed against a victim who was less than 18 years of age at the time of the occurrence and the crime was reported before the victim attained 19 years of age.

“(i) The commission, for good cause shown, finds the delay was justified.” MCL 18.360(c)(i)–(ii); MSA 3.372(10)(c)(i)–(ii).

### 11.3 Expenses That May Be Compensated

Awards must not exceed the amount of a claimant’s “out-of-pocket loss, including indebtedness reasonably incurred for medical or other services necessary as a result of the injury upon which the claim is based, together with loss of earnings or support resulting from the injury.” MCL 18.361(1); MSA 3.372(11)(1).\*

\*For limits on the amount of awards, see Section 11.14, below.

The commission will not reimburse a claimant for losses related to theft or loss of, or damage to, personal property, or for pain, suffering, inconvenience, physical impairment, or other nonpecuniary damage. 1979 AC, R 18.356(1)–(2).

#### A. “Out-of-Pocket Loss”

An “out-of-pocket loss” means “the unreimbursed and unreimbursable expenses or indebtedness reasonably incurred for” certain types of care and services, which are listed in MCL 18.351(1)(e); MSA 3.372(1)(1)(e). Expenses are “unreimbursed and unreimbursable” if the claimant has no means of paying them other than the claimant’s assets or the award from the commission. 1979 AC, R 18.351(1)(q).\*

\*Under legislation pending at the time this manual was published, health care providers would be eligible for compensation for costs of administering sexual assault evidence kits, venereal disease tests, and pregnancy tests. A victim would not be responsible for paying these costs and would not be required to submit an insurance claim before a health care provider may be reimbursed. See SB 552.

“Out-of-pocket” losses for the following types of care and services are eligible for reimbursement:

- F Medical care, MCL 18.351(1)(e); MSA 3.372(1)(1)(e). In addition to costs of care, “[p]ersonal injury victims may be reimbursed for travel costs to and from a particular health care facility where a specific treatment or care unavailable locally is rendered. The [commission] will consider all pertinent medical information in making its decision.” 1979 AC, R 18.359(2).
- F Psychological counseling, MCL 18.351(1)(e); MSA 3.372(1)(1)(e).
- F Replacement services, MCL 18.351(1)(e); MSA 3.372(1)(1)(e). “‘Replacement services’ means homemaking tasks, child care, transportation, and other services previously performed by the victim that, because of the victim’s injury, must temporarily or permanently be performed by a person other than the victim.” MCL 18.351(1)(g); MSA 3.372(1)(1)(g).
- F “[A]ny nonmedical remedial treatment rendered in accordance with a recognized religious method of healing,” MCL 18.351(1)(e); MSA 3.372(1)(1)(e).

- F “[O]ther services necessary as a result of the injury upon which a claim is based.” MCL 18.351(1)(e); MSA 3.372(1)(1)(e). “Other services necessary as a result of the injury” means “recognized medical treatment, convalescent aids, supplies, and other equipment needed by the victim because of physical incapacity sustained as a direct result of the crime.” 1979 AC, R 18.351(1)(n).
- F Funeral expenses. MCL 18.361(3); MSA 3.372(11)(3). Expenses not directly related to the funeral service and disposition of the body are not eligible for reimbursement from the commission. These include “[e]xpenses for flowers, gravestones, catering services, or other personal and family accommodations . . . ,” and family members’ travel costs. 1979 AC, R 18.358(2) and 1979 AC, R 18.359(1).

## B. “Loss of Support”

“‘Loss of support’ means the cessation of a victim’s earnings that were actually paid to or for a dependent prior to the victim’s death and not reimbursed from insurance or public funds after the victim’s death.” 1979 AC, R 18.351(1)(k). A “dependent” is “a person who receives at least 1/2 of his or her support from a deceased victim or claimant and includes a child of the victim born after his or her death.” 1979 AC, R 18.351(1)(g).

## 11.4 Individuals Not Eligible for Awards of Compensation

Four classes of individuals are ineligible to receive awards of compensation from the CVSC:

- F Individuals who are “criminally responsible” for the crime upon which the claim is based are ineligible to file claims.
- F The CVSC must deny payment of an award if it will result in “substantial unjust enrichment” of and “economic benefit” to an individual “criminally responsible” for the crime upon which the claim is based.
- F Accomplices are ineligible to file claims.
- F Inmates of correctional institutions who are criminally victimized are ineligible to file claims for compensation.

These classes of individuals who are ineligible to file claims are discussed in Subsections 11.4(A)–(D), below.

## A. “Criminally Responsible” for the Crime

Pursuant to MCL 18.354(2)(a); MSA 3.372(4)(2)(a), individuals who are “criminally responsible” for the crime upon which the claim is based are not

eligible for awards of compensation. “‘Criminally responsible’ means legally accountable or legally answerable for a crime.” 1979 AC, R 18.351(1)(f). The phrase “legally accountable or legally answerable” indicates that the perpetrator of the crime upon which a claim is based need not be criminally prosecuted to be rendered ineligible for compensation.

## B. “Substantial Unjust Enrichment” and “Economic Benefit”

The commission must deny payment of an award if it “determines that the payment . . . will cause substantial unjust enrichment and economic benefit” to an individual “criminally responsible” for the crime. MCL 18.361(8); MSA 3.372(11)(8). Federal program guidelines prohibit denying compensation to a victim based on the victim’s familial relationship to the offender or where the victim and offender share a residence, except to the extent required to avoid unjust enrichment of an offender. See *Sheppard v Crime Victims Comp Bd*, 224 Mich App 281, 286 n 4 (1997).<sup>\*</sup> Substantial unjust enrichment of the offender may be avoided when the commission pays service providers directly for services rendered to the victim. See *Id.* at 284 n 3.

<sup>\*</sup>Michigan’s crime victim compensation program adheres to these federal guidelines.

## C. Accomplices to the Crime

Pursuant to MCL 18.354(2)(b); MSA 3.372(4)(2)(b), accomplices to the crime upon which a claim is based are ineligible to receive awards of compensation. “‘Accomplice’ means any person who knowingly aids or assists another person in the commission of a crime, either before, during, or after the crime.” 1979 AC, R 18.351(1)(a).

## D. Victims Confined in Correctional Facilities

Victims confined in correctional facilities at the time of the crime are ineligible for awards of compensation. MCL 18.360(d); MSA 3.372(10)(d).

# 11.5 Requirements for Filing Claims for Compensation

To establish the jurisdiction of Michigan’s CVSC over a claim, a crime must cause an injury in Michigan or cause an injury to a Michigan resident in another state that does not have a victim compensation program eligible for federal funding. In addition, Michigan’s CVSC has jurisdiction over a claim if an act of terrorism committed outside the United States causes an injury to a Michigan resident. MCL 18.351(1)(c)(i)–(iii); MSA 3.372(1)(1)(c)(i)–(iii). A “resident” of Michigan is “a person who is living in this state when the crime occurs” and does not include “a person who resides in another state or foreign country and who is temporarily in this state for business, recreation, or personal matters.” 1979 AC, R 18.351(1)(p).

\*See Section 11.1, above, for eligibility requirements.

Eligible “claimants” are injured victims and intervenors or other individuals eligible for compensation because of the injury to a victim or intervenor. MCL 18.351(1)(a); MSA 3.372(1)(1)(a).<sup>\*</sup> A minor’s parent or guardian may file a claim on the minor’s behalf. MCL 18.355(1); MSA 3.372(5)(1). “‘Minor’ means an individual who is less than 18 years of age.” 1979 AC, R 18.351(1)(m).

A claim must be filed in person or by mail in the commission’s office. MCL 18.355(4); MSA 3.372(5)(4). As provided in MCL 18.355(4); MSA 3.372(5)(4), the commission must accept a claim for filing that is submitted by a person who is eligible for an award and that meets jurisdictional requirements.

The application for an award must be on an approved form. MCL 18.355(4); MSA 3.372(5)(4), and 1979 AC, R 18.353. See Section 11.23 for a sample application form.

\*See Section 11.2 for time requirements for reporting the crime to authorities.

A claim must be filed within one year after the occurrence of the crime upon which the claim is based. MCL 18.355(2); MSA 3.372(5)(2).<sup>\*</sup> However, MCL 18.355(2)(a)–(b); MSA 3.372(5)(2)(a)–(b), contain two exceptions dealing with sexual assaults against minors and with the delayed discovery that injuries were caused by criminal misconduct. Those exceptions are as follows:

“(a) If police records show that a victim of criminal sexual conduct in the first, second, or third degree was less than 18 years of age at the time of the occurrence and that the victim reported the crime before attaining 19 years of age, a claim based on that crime may be filed not later than one year after the crime was reported.

“(b) A claim may be filed within 1 year after the discovery by a law enforcement agency that injuries previously determined to be accidental, of unknown origin, or resulting from natural causes, were incurred as the result of a crime.” *Id.*

In any case, upon petition by a claimant and for good cause shown, the commission may extend the period within which a claim must be filed. MCL 18.355(3); MSA 3.372(5)(3). Good cause may be found where late filing is a result of physical or emotional incapacity that is reasonably associated with the victim’s injury, where the victim did not receive information concerning the deadline from authorities responsible for providing it under the Crime Victim’s Rights Act, or where the victim has received inaccurate or incomplete information from a figure of authority from whom a reasonable person would be confident in receiving information in that situation.

Good cause may also include a situation where a claimant has made a conscious decision, based on known facts, not to seek assistance from the



state, and where the claimant later discovers that either the injury or loss from the injury is far more substantial than known earlier. Justification can include newly discovered medical facts or the discovery that other reasonably expected sources of reimbursement are not available.

## 11.6 Deferring Proceedings Before the Commission When a Criminal Prosecution Is Pending

When a claim for an award of compensation is filed, the commission must notify the prosecuting attorney of the county in which the crime is alleged to have occurred. MCL 18.355(5); MSA 3.372(5)(5).<sup>\*</sup> The prosecuting attorney may then request that the commission defer proceedings until any criminal prosecution of the alleged crime is completed. MCL 18.355(5); MSA 3.372(5)(5), states in relevant part:

“If, within 20 days after the notification, the prosecuting attorney advises the commission that a criminal prosecution is pending upon the same alleged crime and requests that action by the commission be deferred, the commission shall defer the proceedings until the criminal prosecution is concluded. When the criminal prosecution is concluded, the prosecuting attorney shall promptly notify the commission. This section does not prohibit the commission from granting emergency awards pursuant to [MCL 18.359; MSA 3.372(9)].”<sup>\*</sup>

<sup>\*</sup>See Section 10.24 for a form used for this purpose.

<sup>\*</sup>Under legislation pending at the time this manual was published, the CVSC may award certain costs to health care providers in sexual assault cases even though a criminal prosecution is pending. See SB 553.

## 11.7 Emergency Awards

The commission may make an emergency award to a claimant “[i]f it appears that . . . an award probably will be made and undue hardship will result to the claimant if immediate payment is not made.” MCL 18.359; MSA 3.372(9). Emergency awards must not exceed \$500.00. The amount of an emergency award must be deducted from a final award, and if the amount of an emergency award exceeds the amount of a final award, the claimant must repay the commission the excess. *Id.*

## 11.8 Investigation Requirements

If the commission accepts a claim for filing, it must conduct an investigation and examination of the claim to determine its validity. MCL 18.356(1); MSA 3.372(6)(1). “The investigation shall include an examination of papers filed in support of the claim, official records and reports concerning the crime, and an examination of medical and hospital reports relating to the injury upon which the claim is based.” *Id.* In addition, the commission has authority to require medical examinations of victims and to “[t]ake or cause to be taken affidavits

\*Under legislation pending when this manual was published, sexual assault victims would not be required to file a police report with the CVSC as a condition of the CVSC reimbursing health care providers for the costs of sexual assault evidence kits, venereal disease tests, and pregnancy tests. See SB 552.

or depositions within or without the state.” MCL 18.353(1)(d) and (f); MSA 3.372(3)(1)(d) and (f). Investigations and determinations of claims are typically conducted by a member of the commission’s staff (a “claims specialist”). See MCL 18.353(2); MSA 3.372(3)(2) (the commission may delegate functions other than conducting reviews or hearings to a staff member).

Through its investigation, the commission must verify certain facts before it makes any award to a claimant. MCL 18.360(a)–(d); MSA 3.372(10)(a)–(d), require the commission to verify the following facts:\*

“(a) A crime was committed.

“(b) The crime directly resulted in personal physical injury to, or death of, the victim.

“(c) Police records show that the crime was reported promptly to the proper authorities. An award may not be made where the police records show that the report was made more than 48 hours after the occurrence of the crime unless either of the following apply:

“(i) The crime was criminal sexual conduct committed against a victim who was less than 18 years of age at the time of the occurrence and the crime was reported before the victim attained 19 years of age.

“(ii) The commission, for good cause shown, finds the delay was justified.

“(d) That the crime did not occur while the victim was confined in a federal, state, or local correctional facility.”

When a claim cannot be verified, the commission must give written notice of particular deficiencies to the claimant. If the claimant does not supply the requested information within a reasonable period of time, the claim must be denied in whole or in part as appropriate. 1979 AC, R 18.355(2).

1979 AC, R 18.355(2) states that “[t]he final burden of proof of the authenticity and eligibility of a claim, or any part of a claim, rests with the claimant.” In its findings of fact, the CVSC applies a “preponderance of the evidence” standard of proof. MCL 24.275; MSA 3.560(175).

## 11.9 “Serious Financial Hardship” Standard

When determining whether to grant an award of compensation, the commission utilizes a “serious financial hardship” standard. That standard is stated in MCL 18.361(7); MSA 3.372(11)(7):

“If the commission finds that the claimant will not suffer serious financial hardship as a result of the loss of earnings or support and the out-of-pocket expenses incurred as a result of the injury if he or she is not granted financial assistance, the commission shall deny the award. In determining the serious financial hardship, the commission shall consider all of the financial resources of the claimant.”

When deciding whether the “serious financial hardship” standard has been satisfied, the commission will permit, as nearly as practicable, the claimant to maintain a reasonable standard of living. “Where out-of-pocket expenses or loss of earnings or support significantly lower this standard of living, the [commission] may consider this serious financial hardship.” 1979 AC, R 18.361(2).

Although MCL 18.361(7); MSA 3.372(11)(7), requires the commission to consider all of the claimant’s financial resources when deciding whether the claimant will suffer “serious financial hardship,” some property of the claimant is exempt from consideration. 1979 AC, R 18.361(1)(a)–(f) contain the following exemptions:

“(a) A homestead or 5 years’ rent at the current rate at the time of the crime for an apartment dweller or dweller of a similar abode.

“(b) Personal property consisting of clothing and other personal effects.

“(c) Household furniture, appliances, and equipment.

“(d) One family automobile selected by claimant or victim.

“(e) Life insurance, except in death claims, and disability or death benefits paid or to be paid to a peace officer on account of injuries sustained in the course of employment.

“(f) An additional amount not exceeding the victim’s annual net taxable income, in the discretion of the [commission], after consideration of all other financial resources.”

## **11.10 Rejection of Claim for Victim’s or Claimant’s Noncooperation**

In most cases, the disposition of a criminal case involving the crime upon which a claim is based does not affect the commission’s authority to determine the claim. Regardless of the status of the criminal proceedings

regarding the crime, the commission may determine a claim unless the claimant is willfully interfering with the criminal prosecution. MCL 18.356(2); MSA 3.372(6)(2), states as follows:

“A claim shall be investigated and determined regardless of whether the alleged criminal was apprehended, prosecuted, convicted, acquitted, or found not guilty of the crime in question, unless the disposition is a direct result of willful noncooperation by the victim or other claimant with the law enforcement agency or the prosecuting attorney. In the event of determination of willful noncooperation by the victim or other claimant, the commission shall reject the claim.”

The CVSC’s procedures manual provides the following guidance regarding the application of this statutory provision:

“Willful means voluntary, conscious, and not accidental. It does not mean careless, thoughtless or inadvertent. Willful noncooperation is indicated and should be further reviewed when a claimant withholds known information from the police, changes their [sic] statement or testimony without adequate explanation, or refuses to show up and review a lineup or to testify. However, the legitimate safety, security, and health concerns of the victim may be considered when weighing this issue.”

### **11.11 Rejection of Claim or Reduction of Award for Victim’s Misconduct**

If a victim’s misconduct contributed to his or her injury, the commission must reject a claim or reduce the amount of an award. MCL 18.361(6); MSA 3.372(11)(6). This statute states:

“The commission shall determine whether the victim’s misconduct contributed to his or her injury and shall reduce the amount of the award or reject the claim altogether, in accordance with the determination. The commission may disregard for this purpose the victim’s responsibility for his or her own injury if the record shows that the injury was attributable to the victim’s efforts to prevent a crime or an attempted crime from occurring in his or her presence or to apprehend a person who had committed a crime in his or her presence. As used in this subsection, ‘misconduct’ includes but is not limited to provocation of or participation in a crime contemporaneous with or immediately preceding the injury.”

\*See 1996 PA  
519, effective  
January 13,  
1997.

The last sentence of this provision, which states that misconduct “includes but is not limited to provocation of or participation in a crime contemporaneous with or immediately preceding the injury,” was added in 1996.\* In a case decided prior to this statutory amendment, the Court of Appeals concluded that a victim’s violation of a criminal statute must be a proximate cause of his or her injury to foreclose a claim for compensation. In *McMillan v Crime Victims Comp Bd*, 155 Mich App 358, 361 (1986), the victim was shot in the leg while in an unlicensed bar. The victim’s presence in the bar was a misdemeanor offense. A man shot the victim after the victim spoke to the man’s wife then commented on the man’s obscene language. The claim was denied on the grounds that the victim’s misdemeanor offense and comments to the man who shot him contributed to the infliction of his injury. The Court of Appeals stated that when a victim is engaged in “peripheral criminal conduct that may have been connected with his injury,” “proximate cause” analysis from tort law should guide the determination as to whether the victim contributed to his or her injury. *Id.* at 365. The Court described the analysis as follows:

“The test used in determining proximate cause involves assessing the foreseeability that the injury would result from the defendant’s acts. If the injury which resulted from the defendant’s acts is deemed too remote or unforeseeable, the defendant’s acts are not held to be a proximate cause of the injury and the plaintiff cannot recover damages from defendant.

“We believe this general proximate cause analysis should be applied in determining whether a victim ‘contributed to the infliction of his injury’ by his violation of a criminal statute. If the risk that the victim’s injury would result from his particular violation of a criminal statute is foreseeable and not too remote, then the board should be allowed to deny or reduce his award under the statute. However, if the risk of injury due to the victim’s particular type of violation of a criminal statute is very remote and unforeseeable, the board cannot deny or reduce his award under the statute.” *Id.* at 365–66.

The Court concluded that the risk of being shot merely by being present in an unlicensed bar was unforeseeable and too remote to determine that the victim’s criminal act was a proximate cause of his injuries. *Id.* at 366. Furthermore, the Court concluded that the victim’s conversation with the man’s wife and comment on the man’s obscene language did not provoke his injury. *Id.* at 367.

The Michigan appellate courts have not had occasion to revisit the issues presented in *McMillan* since MCL 18.361(6); MSA 3.372(11)(6), was amended in 1996.

## 11.12 Reduction of an Award by Amount Received From Other Sources

MCL 18.361(5)(a)–(d); MSA 3.372(11)(5)(a)–(d), provide that payments received or to be received by the victim or claimant from other sources as a result of the injury reduce the amount of an award from the commission. This statute states that an award must be reduced by payments to the victim or claimant:

\*This includes restitution payments. See Section 10.24 for discussion of coordinating the payment of restitution and an award from the commission.

“(a) From or on behalf of the person who committed the crime.\*

“(b) From insurance, but not including disability or death benefits paid or to be paid to a peace officer or a corrections officer on account of injuries sustained in the course of employment.

“(c) From public funds, but not including disability or death benefits paid or to be paid to a peace officer or a corrections officer on account of injuries sustained in the course of employment.

\*Emergency awards are discussed in Section 11.7.

“(d) From an emergency award under [MCL 18.359; MSA 3.372(9)].”\*

An award from the commission is not “subject to execution or attachment other than for expenses resulting from the injury which is the basis for the claim.” MCL 18.362; MSA 3.372(12).

## 11.13 Methods of Paying Award

Generally, awards are made in a lump sum to the claimant. Payments may be made directly to medical and other service providers. 1979 AC, R 18.362(1). In cases of death or protracted disability, an award may be made in periodic payments. MCL 18.362; MSA 3.372(12), and 1979 AC, R 18.362(1). After an award is paid, additional medical expenses and lost earnings must be claimed within 12 months of receiving the treatment resulting in the additional expenses or lost earnings. 1979 AC, R 18.362(2).

“When a protracted award is ordered for lost earnings and subsequent medical reports indicate permanent disability, the [commission] shall require the claimant to file with the social security administration for disability benefits. All claimants receiving compensation for lost earnings shall be required to make the application within 1 year from the date of the crime which gave rise to the claim.” 1979 AC, R 18.360.

## 11.14 Maximum Amount of Award

An aggregate award shall not exceed \$15,000.00 per claimant. MCL 18.361(1); MSA 3.372(11)(1). All claims arising from the death of an individual must be considered together, and the total compensation awarded for such claims must not exceed \$15,000.00. MCL 18.356(1); MSA 3.372(6)(1).

Unless reduced,\* awards for lost earnings or support must be equal to the actual loss sustained but must not exceed \$200.00 per week. MCL 18.361(2); MSA 3.372(11)(2).

Awards for funeral expenses, including burial expenses and grief counseling, must be at least \$200.00 but not more than \$2,000.00.\* The amount of the award “may include not more than \$500.00 to reimburse expenses for grief counseling for the victim’s spouse, child, parent, or sibling.” MCL 18.361(3); MSA 3.372(11)(3). If a claimant would be reimbursed for funeral expenses from public funds other than an award from the commission, the amount of an award for funeral expenses shall not exceed the amount normally paid through the other public funds. 1979 AC, R 18.358(3).

Under MCL 18.361(4); MSA 3.372(11)(4), the following limitations are placed on awards for psychological counseling for direct victims and intervenors:

“An award for psychological counseling shall not exceed 26 hourly sessions per victim or intervenor. The award may include not more than 8 family sessions that include any of the victim’s or intervenor’s spouse, children, parents, or siblings who are not criminally responsible for or an accomplice to the crime. The maximum hourly reimbursement rate shall not exceed \$80.00 per hourly session for a therapist or counselor licensed or registered to practice in this state, except that the maximum hourly reimbursement rate shall not exceed \$95.00 per hourly session for a psychologist or physician licensed to practice in this state.”

## 11.15 Initial Decision by Commission or Staff Member

A “person authorized to decide a claim” may make an initial decision regarding the claim. MCL 18.356(3); MSA 3.372(6)(3). Persons authorized to decide a claim are a commission member or a staff member. MCL 18.353(2); MSA 3.372(3)(2). The decision may be based on the papers filed in support of the claim and the report of the investigation of the claim. If necessary, a person authorized to decide a claim may request a review by the full commission or a hearing prior to making an initial decision regarding a claim. MCL 18.356(3); MSA 3.372(6)(3), and MCL 18.357(2); MSA 3.372(7)(2).\*

\*See Section 11.12, above (“Reduction of Award by Amount Received From Other Sources”).

\*Legislation pending at the time this manual was published would increase the maximum award for funeral expenses to \$2500.00. See SB 445.

\*See Sections 11.16–11.18, below, for the required procedures.

If no hearing or review is requested, a decision granting or denying the award must be made. MCL 18.356(4); MSA 3.372(6)(4). “A written report setting forth the decision and reasons for the decision shall be sent to the claimant.” MCL 18.356(5); MSA 3.372(6)(5).

## **11.16 Request for Review by the Full Commission or a Hearing**

### **A. By Commission Members**

If a commission member deciding a claim “is convinced that a decision should not be made without a hearing,” the commission member may request a hearing. MCL 18.356(3); MSA 3.372(6)(3). If the commission member requests a hearing, the commission must order a hearing. MCL 18.357(2); MSA 3.372(7)(2).

After the report containing the initial decision on a claim has been filed, a commission member may request a review by the full commission of the initial decision. MCL 18.357(2); MSA 3.372(7)(2).

If a commission member wishes to request review of the initial decision or a hearing, the commission member must apply in writing within 30 days of the filing of the report. MCL 18.357(2); MSA 3.372(7)(2), and 1979 AC, R 18.365(2).

### **B. By Claimants**

A claimant may request a review by the full commission or a hearing after an initial decision has been made. MCL 18.357(1); MSA 3.372(7)(1). If the claimant requests a hearing, the commission must order a hearing. *Id.*

If a commission member assigned to decide the claim is unable to decide it in favor of the claimant, or if the commission member denies the claim in whole or in part, the claimant must be notified in writing of his or her right to a review by the full commission or a hearing. 1979 AC, R 18.365(1). If a request for a hearing is made, the commission must order a hearing. MCL 18.357(1)–(2); MSA 3.372(7)(1)–(2).

To request review by the full commission or a hearing, a claimant must apply in writing to the commission’s office within 30 days after he or she receives the report of the initial decision on the claim. MCL 18.357(1); MSA 3.372(7)(1), and 1979 AC, R 18.365(2).

### **C. Notice Requirements**

The commission’s secretary must notify the claimant, claimant’s attorney, or the commission member requesting the review or hearing of the date, time, and place of the review or hearing. 1979 AC, R 18.365(2). If the claimant



wishes to have the commission consider additional information during the review or hearing, such information must be submitted to the commission not less than 10 days before the review or hearing. *Id.*

### 11.17 Procedural Requirements for Reviews by the Full Commission and Hearings

After a request for review of the initial decision regarding a claim is made, the commission must review the record and any additional information submitted and affirm or modify the initial decision. MCL 18.357(3); MSA 3.372(7)(3), and 1979 AC, R 18.366(1).

After a request for a hearing is made, the commission must hold a hearing. MCL 18.357(1)–(2); MSA 3.372(7)(1)–(2), and 1979 AC, R 18.366(2)(a). The commission’s authority regarding hearings is contained in MCL 18.353(1)(e); MSA 3.372(3)(1)(e), and 1979 AC, R 18.366(2)(b)–(e). The administrative rule states that the commission has the authority to do the following:

“(b) Administer oaths or affirmations.

“(c) Examine any person under oath or affirmation.

“(d) Issue subpoenas requiring the attendance and testimony of witnesses and the production of books, papers, documents and other evidence.

“(e) Review the record and any additional material in support of the claim.”

The commission retains discretion to consider additional information submitted at the hearing. 1979 AC, R 18.366(3).

“[A]ny relevant evidence, not legally privileged, is admissible.” MCL 18.356(3); MSA 3.372(6)(3). 1979 AC, R 18.355(2) states that “[t]he final burden of proof of the authenticity and eligibility of a claim, or any part of a claim, rests with the claimant.” In its findings of fact, the CVSC applies a “preponderance of the evidence” standard of proof. MCL 24.275; MSA 3.560(175).

### 11.18 “Final Decision” of the Commission

A “final decision” or “final order” of an administrative agency in a contested case must include findings of fact and conclusions of law and must be based upon “competent, material, and substantial evidence.” MCL 24.285; MSA 3.560(185). See *Smith v Crime Victims Comp Bd*, 130 Mich App 625, 627

(1983) (MCL 24.285; MSA 3.560(185), applied to crime victim compensation proceedings).

If no request for review of the initial decision or a hearing is made within 30 days after the claimant receives the report, the initial decision becomes the commission's "final decision." MCL 18.357(3); MSA 3.372(7)(3).

Following a review of the commission's initial decision or a hearing, the commission chairperson must prepare "a proposed final decision containing written findings of fact setting forth the basis for decision. . . ." 1979 AC, R 18.367(1). If the commission's proposed final decision varies from the initial decision, the report must set forth the reasons for the variance. MCL 18.357(3); MSA 3.372(7)(3), and 1979 AC, R 18.367(1). The commission's proposed final decision, with any amendments, becomes its final decision for purposes of judicial review on the date the commission chairperson and at least two other commission members sign the decision. MCL 18.352(2); MSA 3.372(2)(2) (the commission consists of five members), and 1979 AC, R 18.367(2) (requiring a majority of the former three-member Crime Victims Compensation Board to sign a decision before it became final).

After the commission's decision becomes final, the decision is filed with the commission's secretary. 1979 AC, R 18.367(3). Within 15 days after the final decision is filed, the commission secretary must notify the claimant and provide him or her with a copy of the decision. MCL 18.357(4); MSA 3.372(7)(4), and 1979 AC, R 18.367(3). This notification must advise the claimant that the claimant has 30 days from the receipt of the commission's final decision to file an application for leave to appeal in the Court of Appeals. 1979 AC, R 18.367(3).

## 11.19 Appeals to the Court of Appeals

"Within 30 days after receiving the copy of the report containing the commission's final decision, the claimant may by leave to appeal commence a proceeding in the court of appeals to review the commission's decision." MCL 18.358(1); MSA 3.372(8)(1). The claimant must serve notice of the appeal upon the commission in person or by mail. MCL 18.358(2); MSA 3.372(8)(2).

In *Calloway-Gaines v Crime Victim Services Comm*, 463 Mich 341, 342 (2000), the Michigan Supreme Court held that violation of the 30-day time limit in MCL 18.358(1); MSA 3.372(8)(1), did not deprive the Court of Appeals of jurisdiction to entertain a delayed application for leave to appeal. Applications for leave to appeal filed after the 30-day limit are governed by MCR 7.205(F). See MCR 7.205(F)(3) (except in criminal appeals, an application for leave to appeal filed more than 12 months after entry of a final order will not be granted).

The standard of review of the decision of an administrative agency is set forth in the Administrative Procedures Act. MCL 24.306(1)(a)–(f); MSA 3.560(206)(1)(a)–(f). That statute states in relevant part:

“[T]he court shall hold unlawful and set aside a decision or order of an agency if substantial rights of the petitioner have been prejudiced because the decision or order is any of the following:

“(a) In violation of the constitution or a statute.

“(b) In excess of the statutory authority or jurisdiction of the agency.

“(c) Made upon unlawful procedure resulting in material prejudice to a party.

“(d) Not supported by competent, material and substantial evidence on the whole record.

“(e) Arbitrary, capricious or clearly an abuse or unwarranted exercise of discretion.

“(f) Affected by other substantial and material error of law.”

## 11.20 Attorney Fees

Attorney fees in proceedings before the commission and on appeal from decisions of the commission are governed by 1979 AC, R 18.352. See MCL 18.353(1)(a); MSA 3.372(3)(1)(a) (the commission must promulgate rules for the approval of attorney fees for representation of victims and claimants before the commission and the Court of Appeals), and 1979 AC, R 18.352(5) (attorney fees are only allowed as provided by administrative rule, except that an attorney may agree to charge less than provided in the rule or waive any fee).

If the commission denies the claim because the claimant will not suffer “serious financial hardship”<sup>\*</sup> if an award is not made, the commission must not award attorney fees. 1979 AC, R 18.352(7).

When a claim is decided in favor of a claimant and the claimant does not request review by the commission, attorney fees must not exceed 15% of the amount awarded and are payable from the award. 1979 AC, R 18.352(2). Similarly, if the commission decides a claim totally or partially in favor of a claimant and the claimant does not seek judicial review of the decision within 30 days, attorney fees must not exceed 15% of the amount awarded and are payable from the award. 1979 AC, R 18.352(3).

<sup>\*</sup>See Section 11.9, above, for an explanation of the “serious financial hardship standard.”

If the claimant seeks judicial review of a commission decision and prevails in whole or part, attorney fees must be awarded but must not exceed 25% of the amount awarded upon further review of the claim. 1979 AC, R 18.352(4). This rule states that such fees are payable “pursuant to a fee request . . . or which has been agreed upon with the attorney of record.”

\*See Section 11.22, below.

Unless the commission agrees otherwise, attorney fees must only be paid when the commission makes an award for medical expenses, lost earnings, or loss of support to a claimant and pays the claimant directly. 1979 AC, R 18.352(1). However, when the commission makes an award to the claimant or victim, the commission is subrogated to the claimant’s rights pursuant to MCL 18.364; MSA 3.372(14).<sup>\*</sup> When such subrogation occurs, the commission may agree to reimburse a private attorney up to 15% of the amount paid to the commission by the claimant. 1979 AC, R 18.352(6).

## 11.21 Penalties for Fraudulent Claims and Violations of Confidentiality Provisions

\*Legislation pending at the time this manual was published would alter the penalties for false claims and violations of confidentiality provisions. See SB 402 and 403.

MCL 18.366; MSA 3.372(16), provides criminal penalties for making fraudulent claims or for violating the confidentiality provisions governing the commission.\*

“A person who, with intent to defraud or cheat by falsely presenting the facts and circumstances of a crime to the commission, causes an award of money to be made under this act to any person is guilty of a crime . . . .” MCL 18.366(1); MSA 3.372(16)(1). The penalties for defrauding the commission are as follows:

“(a) If the award is less than \$100.00, a misdemeanor punishable by imprisonment for not more than 3 months or a fine of not more than \$1,000.00, or both.

“(b) If the award is \$100.00 or more, a felony punishable by imprisonment for not more than 10 years or a fine of not more than \$15,000.00, or both.” MCL 18.366(1)(a)–(b); MSA 3.372(16)(1)(a)–(b).

\*See Section 5.15 for discussion of the confidentiality provisions governing the commission.

Unauthorized disclosure of confidential information is a misdemeanor punishable by imprisonment for not more than 3 months, a fine of not more than \$1,000.00, or both. MCL 18.366(2); MSA 3.372(16)(2).<sup>\*</sup>

## 11.22 Recovery of Amount Paid by Commission Through Subrogation and Reimbursement

After the claimant or victim receives an award from the commission, the commission becomes subrogated to the claimant’s or victim’s rights arising from the offense. This allows the commission to recover from the offender or

third party all or part of the amount it has awarded the victim or claimant. MCL 18.364; MSA 3.372(14), states:

“Acceptance of an award made pursuant to this act shall subrogate the state, to the extent of the award, to any right or right of action accruing to the claimant or the victim to recover payments on account of losses from the crime with respect to which the award is made.”

When sentencing a convicted felon, a court may require the felon to reimburse the state for the amount of awards arising from the crime. MCL 18.362; MSA 3.372(12), states in relevant part:

“Any court of record, in establishing sentence for a felon convicted of a crime resulting in awards paid under this section, may impose a condition that the sentence include a method for reimbursement to the state, within the ability of the felon to comply, of the costs paid under this act to a victim of a crime for which the conviction was made. Such reimbursement will be paid into the general fund of the state. Such condition of reimbursement may include a provision relating suspension or probation to reimbursement or may be in lieu of other sentencing and shall be enforceable by the court to the degree that failure to meet the terms of reimbursement may be cause for reversion to an alternate sentence or to completion of an unfinished sentence.”

### 11.23 Sample Crime Victim Compensation Application

Application for an award of compensation from the Crime Victim Services Commission must be on an approved form. MCL 18.355(4); MSA 3.372(5)(4), and 1979 AC, R 18.353. The following form is approved by the CVSC. It is available on line at [www.mdch.state.mi.us/cv/Dch-0560.pdf](http://www.mdch.state.mi.us/cv/Dch-0560.pdf).